

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LY TRI,

Plaintiff,

v.

C. GUTIERREZ, et al.,

Defendants.

Case No.: 1:22-cv-00836-KES-SKO (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO GRANT
DEFENDANT MCNUTT'S MOTION TO
DISMISS

Docs. 16, 32

Plaintiff Ly Tri is proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Plaintiff commenced this action on July 8, 2022. Doc. 1. After the assigned magistrate judge screened the complaint and ordered service of process, the action proceeded on plaintiff's First Amendment retaliation claim against defendant D. Gutierrez and Fourteenth Amendment due process claim against defendant McNutt ("McNutt"). Docs. 9, 10. On July 26, 2023, McNutt filed a motion to dismiss. Doc. 16. The motion to dismiss is fully briefed. Doc. 27 ("Opp'n"); Doc. 29 ("Reply"). On April 25, 2024, the assigned magistrate judge issued findings and recommendations recommending that McNutt's motion to dismiss be granted. Doc. 32.

1 Specifically, the magistrate judge recommended plaintiff's Fourteenth Amendment due process
2 claim against McNutt be dismissed and that McNutt be dismissed from the action. *Id.* at 6–14.
3 Following an extension of time, plaintiff filed objections on June 20, 2024. Doc. 35. McNutt
4 filed a response to the objections on June 24, 2024. Doc. 36.

5 In his objections, plaintiff contends the magistrate judge erred in taking judicial notice of
6 redacted prison records because, in the supporting declaration, the California Department of
7 Corrections and Rehabilitation's ("CDCR") custodian of records purported to authenticate only
8 unredacted versions of those records. *See* Doc. 35 at 3; Doc. 16-1 at 5. Plaintiff contends the
9 magistrate judge's judicial notice of the documents was improper because they contain
10 redactions. Doc. 35 at 3–4. Plaintiff also disputes the magistrate judge's substantive findings.
11 First, plaintiff disagrees that the subsequent disciplinary hearing rendered moot any due process
12 violation that occurred in the initial disciplinary hearing. *Id.* Second, he objects to the dismissal
13 of his claim that McNutt submitted false evidence against him in his initial hearing. *Id.* at 4.
14 Last, plaintiff objects to the finding that there was sufficient evidence to support his guilt in the
15 second disciplinary hearing and contends that the hearing officer applied the wrong legal
16 standard. *Id.* at 5. In response, McNutt notes that plaintiff's arguments were previously
17 addressed by the parties in the underlying briefing on the motion to dismiss and were correctly
18 considered by the magistrate judge in the findings and recommendations. *See generally* Doc. 36.

19 In accordance with 28 U.S.C. § 636(b)(1), the Court conducted a de novo review of this
20 case. Having carefully reviewed the matter, including plaintiff's objections and McNutt's
21 response, the Court concludes the findings and recommendations are supported by the record and
22 proper analysis.

23 Plaintiff's objections do not undermine the magistrate judge's conclusions. McNutt's
24 motion to dismiss asserts that the Court lacks subject matter jurisdiction over plaintiff's due
25 process claim against him. Doc. 16-2 at 5. "[W]here the moving party makes a factual challenge
26 to the court's subject matter jurisdiction by offering affidavits or other evidence in support of the
27 motion, the opposing or non-moving party must present similar evidence 'necessary to satisfy the
28 burden of establishing that the court, in fact, possesses subject matter jurisdiction.'" *St. Clair v.*

1 *City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989). Plaintiff has not identified disputed factual
2 issues that preclude the Court’s determination of its subject matter jurisdiction. While plaintiff
3 argues that the magistrate judge should not have taken judicial notice of the CDCR records
4 because they were (minimally) redacted, plaintiff provided many of those same records in
5 unredacted form in his own complaint. *See generally* Doc. 1. Moreover, the custodian
6 authenticated the records in unredacted form and a court may take judicial notice of such official
7 CDCR records. *See Brown v. Valoff*, 422 F.3d 926, 931 n.7 (9th Cir. 2004). Therefore, plaintiff’s
8 first objection lacks merit.

9 The magistrate judge also correctly determined that the alleged due process violation in
10 plaintiff’s first disciplinary hearing was cured through the administrative appeals process, which
11 resulted in a second disciplinary hearing at which plaintiff’s requested witness was allowed to
12 testify. *See Frank v. Schultz*, 808 F.3d 762, 763 (9th Cir. 2015) (holding procedural errors may
13 be corrected through the prison appeals process). Plaintiff also contends McNutt falsified
14 documents in connection with the first disciplinary hearing and attributed a statement to him that
15 plaintiff denies having made. Doc. 1 at 4. As the magistrate judge correctly determined,
16 however, a false allegation against a prisoner does not independently support a section 1983 claim
17 where any procedural deficiency in the first hearing was cured through the administrative appeal
18 process.

19 Last, plaintiff challenges the merits of his guilty conviction in the second disciplinary
20 hearing, contending he could not have had constructive possession of the contraband cellphone,
21 but this argument does not establish a procedural due process claim. The federal Constitution
22 does not require evidence that logically precludes any conclusion but the one reached by the
23 disciplinary board. *Superintendent v. Hill*, 472 U.S. 445, 456–57 (1985). All that is necessary is
24 that “some evidence” support the hearing officer’s conclusion. *Id.* Here, among other evidence,
25 the hearing officer relied on the reporting officer’s observation that the contraband was located
26 “on the chair of the inmate desk” in plaintiff’s shared cell, and “[t]he location of the cell phone
27 made it easily accessible by both inmates housed in the cell.” Doc. 1 at 11. “Even just one piece
28 of evidence may be sufficient to meet the ‘some evidence’ requirement, if that evidence has

1 sufficient indicia of reliability.” *Bruce v. Yslt*, 351 F.3d 1283, 1288 (9th Cir. 2003); *Cato v.*
2 *Rushen*, 824 F.2d 703, 705 (9th Cir. 1987) (stating the “relevant question is whether there is *any*
3 evidence in the record that *could* support the conclusion reached by the disciplinary board)
4 (emphasis in original). The evidence relied upon by the hearing officer is sufficient to meet the
5 *Hill* standard. *See, e.g., Dickerson v. Foulk*, Case No. 2:14-cv-0731 WBS CKD P, 2014 WL
6 6612094, at *3 (E.D. Cal. Nov. 20, 2014) (finding inmates’ shared access to a place where
7 contraband was stored sufficient to establish constructive possession and culpability); *Lucas v.*
8 *Janda*, Case No. 15cv1923 AJB (BLM), 2016 WL 4196654 (S.D. Cal. Aug. 9, 2016) (same).

9 Therefore, the findings and recommendations appropriately found that the Court lacks
10 subject matter jurisdiction over plaintiff’s due process claim against defendant McNutt.

11 Accordingly:

- 12 1. The Findings and Recommendations issued on April 25, 2024 (Doc. 32) are
13 ADOPTED in full;
- 14 2. Defendant McNutt’s motion to dismiss (Doc. 16) is GRANTED.
- 15 3. Plaintiff’s Fourteenth Amendment due process claim against Defendant McNutt is
16 DISMISSED;
- 17 4. Defendant McNutt is DISMISSED from this action; and
- 18 5. This matter is referred back to the assigned magistrate judge for further proceedings.

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21 IT IS SO ORDERED.

22 Dated: June 6, 2025

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25 UNITED STATES DISTRICT JUDGE
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